

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Avery D. Sumter,)	
)	C/A No.: 0:06-1907-MBS
Petitioner,)	
)	
vs.)	
)	
South Carolina Department of)	
Corrections; Attorney General of the)	ORDER
State of South Carolina,)	
)	
Respondents.)	
)	

Petitioner Avery D. Sumter is an inmate in custody of the South Carolina Department of Corrections who currently is housed at the Kershaw Correctional Institution in Kershaw, South Carolina. Petitioner, appearing pro se, seeks relief from a federal sentence that was imposed to run consecutively to his state sentence.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On August 17, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be dismissed without prejudice because Petitioner is required to file a motion under 28 U.S.C. § 2255, rather than a petition under § 2254, to seek the relief he requests. Petitioner filed no response to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The petition is dismissed without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

September 13, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.